

OPINION
46-52

February 19, 1946 (OPINION)

COUNTY COMMISSIONERS

RE: Not Entitled to Expense for Attending Meetings of Association

Your letter of February 13, 1946, has been received. In this letter you inquire whether you as county commissioner of Pierce County are entitled by law to collect expenses incident to your attendance at the meeting of the county commissioners' association held in Valley City, North Dakota in January of 1946.

Section 44-0803 of the North Dakota Revised Code of 1943 provides for the collection of traveling expenses of a public official of a political subdivision "while engaged upon public business," in an amount allowed by law for travel. Section 11-01015 of the North Dakota Revised Code of 1943 sets the mileage or travel allowance of county officials, "actually and necessarily traveled in the performance of official duties." Travel by team is set at seven cents per mile, by motor vehicle five cents per mile, and three cents per mile, or actual expense if the fare exceeds three cents per mile, when traveling by rail or other common carrier.

The county commissioners' association is a voluntary organization of the county commissioners of the various counties of the state of North Dakota. No statute has come to my attention, nor do I believe that any exists, which authorizes or obligates county commissioners to attend the meetings of the association, nor do I believe that such attendance comes within the term "performance of official duties." Nor is a county commissioner engaged "upon any public business" while attending such meeting.

In the case of State v. Borstad, 27 N. D. 533, it was held that a county commissioner was without authority to charge for services rendered in receiving applications for loans for seed grain, or collecting any sum due therefor.

In absence of a statute authorizing or obligating the county commissioners to attend meetings of the county commissioners' association, I reluctantly come to the conclusion that a county commissioner who attends such meetings does so at his own expense. I believe such meetings, if taken seriously by those in attendance, are of distinct benefit to the official who attends and enables him to perform his public duties more efficiently, and should therefore be considered as being the performance of official duty and upon public business, but there is no statute now existing authorizing the county commissioner to collect for his expenses in attendance of such meetings, nor authorizing the county to pay such expenses.

It is, therefore, the opinion of this office that you do not have the right, under existing statutes, to collect your expenses for the attendance at this meeting of the county commissioners' association.

NELS G. JOHNSON

Attorney General